IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1757 OF 2004
IN
CRIMINAL APPEAL NO.222 OF 2004

1. Ishwar Piraji Kalpatri & Anr ...Applicants.

V/s

1. The State of Maharashtra ...Respondents.

Ms. Varsha Palav for the applicant.

Mr. A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 22nd September, 2004

P.C.

1. By this Criminal Application, applicants are seeking an order for releasing the entire assets which were confiscated by the respondents on execution of bond of Rs 4,63,265/-. Applicants are also seeking that the entire assets of Rs 12,46,971.42 be released on such terms and conditions as this Court deems fit. Applicants are also seeking stay of the order dated 24/4/2003 passed by the Special Judge.

2. By Judgment and Order dated 31/12/2002, the Special Court directed that the valuable securities and investments to the tune of Rs 4,63,265/- be confiscated. The list of valuable securities and bank

balance is annexed to the appendix of the said judgment and order. From the record, it can be seen that during the course of investigation, total amount of assets to the tune of Rs 12,46,971.42 have been confiscated by the respondents. The Trial Court has come to the conclusion that an amount of Rs 4,63,265/- is disproportionate to the applicants' known source of income and, therefore, directed the attachment of the said amount. It is a settled position in law that where properties are confiscated under the provisions of Criminal Law Amendment Ordinance, 1944 and if the part of the property is shown as disproportionate then, in that event, remaining property has to be released.

3. Under the circumstances, in my view, the assets over and above Rs 4,63,265/- should be released on the applicants' executing a personal bond to the effect that in the event the appeal is filed against the impugned order by the State and if any adverse order is passed therein, applicants shall return the said amount. So far as the property which is confiscated by the order of the Special Judge, the said property shall stand confiscated. However, the attachment shall be subject to the hearing and final disposal of

the Criminal Appeal.

4. In the result, the following order is passed:-

O R D E R

. The property seized by the respondents above the value of Rs 4,63,265/- be released on the applicants executing a bond that in the event any adverse order is passed against them, they shall return the said property.

. Criminal Application No.1757 of 2004 is disposed of in the above terms.

V.M. KANADE, J.